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**QUARTERMASTER
CORPS MANUAL**

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**PREPARATION
OF
PRETERMINATION SETTLEMENT
AGREEMENTS
A GUIDE FOR LAWYERS**



**ARMY SERVICE FORCES
OFFICE OF THE QUARTERMASTER GENERAL**

**ARMY SERVICE FORCES,
OFFICE OF THE QUARTERMASTER GENERAL,
WASHINGTON 25, D. C., 15 April 1945.**

Quartermaster Corps Manual QMC 21-7 is published for the information and guidance of all concerned.

E. B. GREGORY,
Lieutenant General,
The Quartermaster General.

NUMBERING SYSTEM OF QUARTERMASTER CORPS MANUALS

The assignment of numbers to Quartermaster Corps Manuals is made in accordance with the following numbers assigned to divisions of the Office of The Quartermaster General:

Executive Office.....	QMC 11-	Personnel Division	QMC 20-
Fiscal Division.....	QMC 12-	Procurement Division.....	QMC 21-
Fuels and Lubrication Division	QMC 13-	Service Installations Division..	QMC 22-
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Organization Planning and			
Control Division.....	QMC 19-		

Preparation of PRETERMINATION SETTLEMENT AGREEMENTS

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A Guide For Lawyers



**CONTRACT TERMINATION SECTION
LEGAL BRANCH, PROCUREMENT DIVISION
OFFICE OF THE QUARTERMASTER GENERAL**

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This manual supersedes the dittoed pamphlet dealing with the same subject which was distributed in February 1945. At the time of this writing, no revision of the JTR relating to Advance Preparations for Termination Settlements has been published except ASF Cir. 366 (1944). To the extent that the contents hereof are in conflict with any provision of the JTR as and when revised, they shall be regarded as modified accordingly.

Section I

INTRODUCTION

A. In a memorandum dated 2 March 1945 to The Quartermaster General regarding contract settlement and property disposal activity General Somervell pointed out that:

"Prompt and equitable settlement of terminated contracts aids production, and advance preparations for terminated settlements, if wisely planned and executed, constitute an effective means of maintaining maximum production and testing the workability of our plans. I desire, therefore, that we again intensify our efforts on these problems, with a view of . . . materially increasing our activity on pretermination planning to the end that formalized agreements, involving as many elements of the contract as possible, be consummated."

Pursuant to directives from Headquarters, ASF, Quartermaster procuring depots have embarked upon a program of negotiating pretermination settlement agreements. The depot legal branches, pioneering in a new field of legal draftsmanship, have devised many contract provisions to carry out the arrangements negotiated by the termination branches. In submitting pretermination agreements to this office for approval they have, however, raised many questions as to the form and contents of pretermination settlement agreements and articles. Since the problems which are arising in the preparation of the documents are common to all the depots involved in this activity and since most depots have still had comparatively little experience in drafting these specialized agreements, it is believed desirable to issue a manual as a guide in the preparation of these agreements.

B. The primary purpose of this manual is to offer suggestions to the lawyer in the Depot Legal Branch which may aid him in drafting pretermination settlement agreements with prime contractors. The context relates primarily to those pretermination settlement agreements which determine all elements of a termination settlement. Many of the provisions however can be used as guides in the preparation of any pretermination agreement covering specific elements of a settlement. The instructions contained herein are based on the assumption that the contract contains the approved Termination Article set forth in JTR 931.

C. Section II of this manual contains general information regarding pretermination settlement agreements. Section III discusses "no charge" settlements. Section IV explains the mandatory and permissive contract provisions and sample settlement agreement forms which are set forth in the Appendix. Section V specifies certain expressions and clauses which should be avoided in drafting agreements.

D. It is not intended by this publication to limit termination personnel to the use of the arrangements suggested by these contracts and clauses or to discourage the drafting of other contracts and provisions by the Depot lawyer. The variety of contractual provisions for use in pretermination settlement arrangements is measured only by the limitation of the lawyers' ingenuity. It is recommended however that the pretermination settlement agreements or clauses now being used by the Depot Legal Branches which have been hitherto approved in this office or are based on agreements and provisions already approved be reexamined before being used further and if necessary be re-drafted in accordance with the suggestions contained in this text.

Section II GENERAL

A. In drafting pretermination settlement agreements the lawyer will find his task easier if he bears in mind one fundamental concept: the decisions and determinations which are made and expressed in advance of termination in the pretermination settlement agreement are essentially the same as those made normally after termination, either by negotiation by the parties or unilaterally by the contracting officer. Therefore, any regulations or manuals such as the Joint Termination Regulation and Joint Terminal Accounting Manual which announce the War Department policies on substantive and procedural questions applicable to post-termination settlements should serve as valuable guides in determining similar questions in advance of termination. In drafting the proposed agreement, the lawyer faced with special problems should constantly ask himself the question: "What would be required had this question been raised in the course of a settlement made after notice of termination?" Ordinarily it is reasonable to conclude that the acceptable post-termination procedure may be the basis for the acceptable pretermination provision. Such treatment of the subject will avoid unnecessarily complex and unorthodox solutions of simple problems.

B. A pretermination settlement agreement should be considered as a supplement defining one or more of the amounts to be paid to the contractor "as agreed upon" under paragraph (c) of the Termination Article. It is therefore unnecessary to rescind the Termination Article in negotiating a pretermination settlement agreement. In the opinion of this office it is preferable not to provide in the Supplemental Agreement that the Termination Article is rescinded. (Attention is invited to the fact that PR par. 324 which requires the incorporation of the Uniform Termination Article in certain contracts has not been revoked or modified so as to authorize its omission in a contract containing a pretermination settlement agreement.) Instead, an appropriate article such as No. 17 in the Appendix should be inserted in every pretermination settlement agreement so that any compensable element referred to therein upon which there is no specific agreement may be determined after termination by negotiation under paragraph (c) or unilaterally by the contracting officer under paragraph (d) of the Uniform Termination Article. Paragraphs (e), (f), (g) and (h) of the Article may also solve problems left open or unforeseen in drafting the pretermination settlement agreement.

C. Conversely, the draftsman must constantly bear in mind that the provisions upon any subject of the termination settlement should be complete. After termination, the parties will necessarily have to turn to such written clauses for direction or guidance on any action which must be taken. Reliance cannot be had upon the JTR, the Uniform Termination Article or other War Department directives if it appears that the parties by such provisions intended to take the whole subject out of the realm of further negotiation.

It will sometimes be difficult to frame a paragraph or clause which completely covers a particular subject. For example, a specific provision may be to pay the contractor for his work in process at a stipulated unit price or according to other described bases. After termination, questions may arise as to which items of inventory are to be classified as work in process and which items so classified are to be the subjects of compensation. The parties may have to determine, among other things (1) whether the compensable work in process is limited to the balance of the quantitative requirements of the contract; (2) whether defective production is to be paid for at the same rate as work-in-process which meets specifications; (3) whether common items are to be allocated first to other work and to what extent; and (4) whether items in anticipation of production schedules are to be included in the compensable inventory.

A recommended solution is a clause making certain elements of cost subject to the provisions of the Statement of Cost Principles and the Termination Cost Memoranda of the Office of Contract Settlement as of the date of the agreement to the extent that they are applicable, unless the context of the agreement requires otherwise. As applied to the work in process under the type of agreement set forth in Form No. I in the Appendix, the negotiated costs set forth under "Unit Cost" in the schedule cannot thereby be increased but such problems as those in the above example are answered.

Other solutions may be devised. However, in reducing them to writing the draftsman should be careful so as not to make his clause too restrictive or too broad.

D. Another note of caution must be sounded. Before drafting a pretermination agreement the lawyer must study and analyze the possible effect of any price adjustment provisions of the basic contract. It may be necessary to include in the pretermination settlement agreement some provisions specifying how the settlement otherwise arrived at will be affected in the event that any adjustment in price is made either before termination or as a result of the termination. For example, it may be provided that if any adjustment of the price is made under the price adjustment article in the contract, the schedule of unit costs set forth in the pretermination settlement agreement shall be adjusted to give effect to the increased or decreased costs of the contractor. If the parties cannot agree upon the amounts of adjustment, the agreement may provide that the dispute shall be decided pursuant to the Disputes Article.

E. There are other contingencies which may also be the subject of contractual provisions.

(1) Frequently the parties will predicate their agreement upon probable future market prices based partly upon their forecast of future labor and material conditions in the industry. Where they believe that there is a reasonable possibility of radical changes in such conditions which are unpredictable

in extent, it may be desirable to provide for cancellation of the pretermination settlement agreement in the event of the occurrence of any such conditions. The element of business risk will thereby be reduced to a minimum compatible with good business.

(2) One type of contingency with which the draftsman may be confronted upon termination is the existence of WPB Orders or OPA Pricing Regulations which may frustrate the contractor in his plans to convert raw materials and work in process to civilian production. For example, the contractor may contend that WPB General Preference Order M-388 will limit his activities in the civilian production of wool textiles and that he cannot make the same retention offers for his termination inventory if he must comply with such orders. The OQMG has established the policy however that it will not agree to retention offers which have been reduced to allow for such Preference Orders or any OPA pricing regulations. Yet is it desirable that the contractor and the Government enter into a pretermination settlement agreement upon which both may rely at least tentatively in making plans effective on termination of the contract. To enter into no agreement at all will not solve the contractor's problem and it may result in a loss to him of the opportunity to free himself for other war or civilian production very quickly.

(3) A recommended solution in such a case is a provision that the pretermination settlement agreement shall not become operative or that it shall be subject to cancellation in the event that upon termination WPB General Preference Order M-388 is in effect and that thereupon settlement shall be pursuant to the Uniform Termination Article instead. (No. 16). Since such clause reduces the certainty that the pretermination settlement agreement will become operative, it should be utilized only in accordance with established policy. But, if the negotiator advises that a pretermination settlement agreement may be made with a particular contractor only if contingencies like the foregoing are provided for, the lawyer should draft some provisions which will cover the specific problem of the contractor and protect the interests of the Government.

F. Pretermination settlement agreements should be drawn in as simple a form as possible. Frequently the lawyer will find that after he has once set down on paper a draft of a contract embodying the arrangement as contemplated by the negotiator and contractor he will be able to combine certain paragraphs or omit repeated provisions, or otherwise streamline the proposed agreement. For example, under the proposed arrangement work in process at successive stages may be priced in a different manner or may be treated differently if various degrees of advance notice are given or if it is not given to all. In such cases there is no need to repeat the provisions relating to completed articles of raw materials under each alternative if the payment for such elements remains constant. Efforts should always be made to rephrase complex provisions so that the context will be free from complications and easy to understand.

Section III

NO CHARGE PRETERMINATION SETTLEMENT AGREEMENTS

A. When Authorized

(1) It is significant to note that JTR 225.4 (4) authorizes *only* that type of "no-charge" pretermination settlement agreement which provides that the contractor will make no charge if he is given advance notice a specified period of time before the effective date of termination. The purpose of such advance notice is to permit the contractor to work out his costs or probable losses so that on the effective date of termination he will have no claim for fair compensation. Notice should not be specified in the agreement merely in an attempt to comply formally with an administrative requirement.

(2) It is not to be assumed, however, that the pretermination settlement agreement involving a waiver of the contractor's claim for fair compensation will become of theoretical rather than of practical interest because of the requirement of advance notice. On the contrary, a new and fertile field based upon the device of advance notice has now been opened. Where the contractor desires time in advance of termination to work out his costs or losses so that he will not have a claim for fair compensation on the effective date of termination or where he wishes to make an agreement providing for certain elements of his costs and for advance notice to work out the others, the pretermination settlement agreement may be utilized. As a result, inventory such as work in process which in the absence of such agreements would normally have to be treated as scrap after termination may be converted into economic goods at a substantial saving to the Government.

B. When Unauthorized

"No charge" pretermination settlement agreements should not, however, be negotiated with the contractor who states that upon termination without advance notice he will have no termination charges and therefore no claim for fair compensation. In such case the reason for advance notice does not exist since there are no costs for the contractor to work out by additional processing. Likewise, if the contractor states that he will have termination charges only as to certain minor elements of his claim for fair compensation and desires an agreement which will provide specifically for the payment of such charges and a waiver of all others, the policy of the Quartermaster Corps is that the requested pretermination settlement agreement should not be negotiated, whether or not it is contingent upon advance notice. Either of these cases is an appropriate subject for a non-binding informal memorandum. (See Appendix A, form No. III.)

C. Drafting The Agreement

In drafting the "no charge" pretermination settlement agreement, three points are worthy of particular consideration. First, since the agreement can become operative only upon the giving of the specified advance notice prior to

the effective date of termination, it should clearly describe the time when such advance notice should be regarded as given, e.g. when it is deposited in the U. S. Registered mails or when it is received by the contractor. Second, since Readjustment Division, Headquarters, ASF, has stated that it is preferable that a final settlement agreement be executed by the parties after termination, it is recommended that the agreement not provide for self-executing releases. It is sufficient to state that upon termination after such advance notice the contractor will execute a supplemental agreement containing such releases as are deemed necessary or desirable by the contracting officer. Third, since specific provisions authorizing the contractor to continue work in process may possibly be construed to be unlimited as to time and extent of performance, the agreement in such case should provide that production for the Government's account as to the terminated portion of the contract will be stopped immediately upon receipt of notice of termination. The danger exists that the stop-work policy of the War Department will be violated if any contractual clause relating to processing by the contractor at the Government's expense is not restricted to the deliveries the Government requires to meet military needs. A simple form which it is believed meets the requirements of the first two points is set forth in Appendix A, as Form No. II. Since the agreement does not contain *specific* provisions authorizing the contractor to continue work in process, it is deemed unnecessary to provide therein specifically for the stoppage of work as to the terminated portion of the contract. Coverage as to this point is provided by the terms of the Uniform Termination Article retained in the contract pursuant to paragraph 4 of the form.

Section IV

CONTENTS OF PRETERMINATION SETTLEMENT AGREEMENTS

A. The Whereas Clauses

(1) When an agreement is based upon a forecast of the factors involved in determining fair compensation, the available data must permit a reasonable forecast, consistent with sound commercial standards, of such factors and the agreement must so state (JTR 226). The agreements described herein which determine the whole matter of fair compensation will necessarily be based upon a forecast of the factors involved. Therefore, every such pretermination settlement agreement must contain the mandatory "whereas" clause (No. 4) set forth in the Appendix.

(2) A "whereas" clause which states that it is mutually agreed that the agreement will advance one or more of the objectives of the Contract Settlement Act of 1944 is desirable (No. 5.)

(3) The "whereas" clause set forth in the form suggested in ASF Circular 366 (1944) reciting the authority of the Government to terminate work at any time, the right of the parties to agree upon the amount to be paid the contractor by reason of such termination and the advantages deemed to be gained in negotiating in advance of termination, may also be utilized, where applicable (Nos. 2 and 3).

B. Substantive Articles

(1) *Elements to be Covered.* a. Every pretermination settlement agreement should contain provisions covering the following elements of the contractor's own claim:

- (1) Completed articles delivered to and accepted by the Government and not previously paid for.
- (2) Raw Materials.
- (3) Component parts and supplies.
- (4) Work in process.
- (5) Profit.
- (6) Post-Termination Expenses.

No mention is made here of statutory interest. Since it is the policy of the Quartermaster Corps not to provide for the waiver of interest in a pretermination settlement agreement, interest need not be mentioned at all in such an agreement except where some allowance for interest is being included as a part of another compensable cost, in which case an appropriate explanation should be made.

If agreed to by the contractor it may be provided that the amount to be paid for one or more classes of costs includes the contractor's profit by reason of termination of the work under the contract, post-termination ex-

pense, etc. In that event such elements will not be covered again in the agreement.

b. Every pretermination settlement agreement should have a specific provision relating to *subcontractors'* termination claims.

(1) If the agreement states that the payment to the prime contractor includes the cost of settling and paying claims arising out of termination of work under subcontracts or orders allocable to the terminated portion of the contract, it should expressly provide that the contractor agrees to expedite the prompt settlement and payment of such claims without reimbursement from the Government.

(2) If the agreement includes a *basis for determining the amounts* to be paid on account of subcontractor claims, it should contain an undertaking by the contractor to pay such amounts within a specified period of time after the prime contractor is paid or otherwise to return the amounts thereof to the Government.

(3) If the amount payable to the contractor does not include sums payable on terminated subcontracts, it is desirable to include a warranty by the contractor that the unit costs and losses set forth do not include a reserve for the payment of subcontractors' claims (No. 10). Under such circumstances, the Government is to pay the cost of settling subcontractors' claims in accordance with the Uniform Termination Article and no amount should be included by the Contractor in his own costs to establish a reserve for such purposes. In addition it may be provided that the contractor expedite the processing of subcontractors' claims (No. 11).

(2) *Inventory Lists.* In an agreement predicated upon the "count and multiply" basis of computing costs there should be a provision for a physical count of the termination inventory, since the amounts payable to the contractor depend upon the actual inventory at termination. Normally, if a settlement is made after termination pursuant to the Uniform Termination Article without any pretermination settlement agreement, the contractor is required to file inventory schedules in form satisfactory to the contracting officer. The Government has the right to make complete or selective checks of the inventory at any time. Such procedure after termination may serve as a convenient guide for a satisfactory provision in the pretermination settlement agreement. With such thought in mind, clause No. 6 is suggested in the Appendix. However, if it is so desired, the inventory clauses (No. 7) appearing in ASF Circular 366 may be incorporated in lieu thereof, where applicable.

(3) *Computation of Costs.* a. In addition to providing for a physical count of the inventory, it is necessary to describe the methods for determining the amounts to be paid therefor to the contractor. The formula for making such determination is generally called "count and multiply." A feasible method of expressing this basis for computing costs is to set forth (i) the "unit costs" (which may be *negotiated* rather than actual costs and may in-

clude profit) to be paid by the Government for the inventory at the various stages of the production cycle; (ii) the unit retention values (if the contractor agrees to retain the inventory) representing the price per unit which the contractor agrees to credit the Government for such inventory; and (iii) the net unit payment to be made by the Government. If the Government is to take delivery of such inventory, the unit costs and net unit payments will be identical. A convenient and desirable device by which to record the information is a schedule (No. 19) attached to and made a part of the agreement. This schedule may be employed by an Article (No. 8) in the agreement which will provide that the Government will pay to the contractor an amount equal to the sum of the amounts arrived at by multiplying the quantities of inventory allocable to the terminated portion of the contract in each of the respective stages of production described in the schedule by the applicable unit payments as set forth in said schedule. A pretermination settlement agreement incorporating such an Article and schedule may contain other provisions setting up rules excluding, for purposes of payment, items of inventory in the various stages of production described in the schedule. A common items clause (No. 13) (see also Section IV, paragraph B7) or a clause applying to a limited extent the Statement of Cost Principles and Termination Cost Memoranda of the Office of Contract Settlement as of the date of the Supplemental Agreement are examples. (No. 14).

b. Another plan of setting forth the method of computing the costs is to deal with the inventory in one main paragraph (similar to No. 8), making provision in separate subparagraphs for completed items, raw materials by classes, components, work in process, supplies, subcontractors claims, and post termination expenses. In form this method of expressing the computation of cost differs from that described in the previous paragraph in that it eliminates the schedule. It is adaptable to the case where work in process is not divided into stages of production for the purpose of computing costs but is paid for on the basis of a negotiated single unit cost expressed in terms of the number of completed end items which could be manufactured out of such work in process. A subsequent paragraph in the agreement should provide that the sum computed in accordance with all of such paragraphs constitutes full and complete settlement of all monies due and to become due to the contractor by reason of the termination (No. 15).

(4) *Property Disposal.* One of the most important subjects which should be covered in the agreement is the disposal of termination inventory. The treatment given will vary with the deal. If the arrangement with contractor is (as it generally will be) that he will retain all or substantially all of the inventory, the agreement should provide for the negotiated retention values in terms of unit offers or prices to be credited against the gross settlement. Wherever it is believed that the Government may have a need for certain items at termination, an option in favor of the Government to take title and delivery in lieu of retention by the contractor should be stipulated. In such

case, the agreement should provide for payment to the contractor of the stated unit costs. The two most frequently used methods of expressing retention values have been (i) by a column in the schedule of predetermined allowances entitled, for example, "Unit Retention Offer" in which are recorded the negotiated unit retention prices for the inventory at various stages of the production cycle to be retained by the contractor; and (ii) by a statement of the unit retention values in separate paragraphs setting forth the unit costs allowed against which the amount of disposal credits (retention values) will be credited.

(5) *Maximum Limitation on Payment (Mandatory)*. a. No. 9 of the Appendix must be incorporated in every pretermination settlement agreement. Paragraph H, Section V, ASF Circular 366 (1944) requires a provision relating to the maximum limitation on the amount payable by the Government under the contract and it is intended to mean that where a pretermination settlement agreement will determine the amount payable to the contractor as fair compensation for termination, it should provide that the *gross* amount, exclusive of any sum payable for post-termination expense, should not exceed the total contract price, minus payments otherwise made or to be made under the contract.

b. Generally the pretermination settlement agreement will include provisions for the payment by the Government to the contractor of *net* amounts instead of *gross amounts*. These may represent the difference between the contractors' costs and his retention offers for classes of inventory therein described. Consequently, a clause in the agreement stating that the sum of the amounts payable to the contractor thereunder (all of which will not therefore be gross amounts) shall not be greater than the contract price less payments otherwise made and to be made under the contract will incorrectly state the "Maximum Limitation on Payment" rule. Since No. 9 of the Appendix complies with the rule, it should be used whether the amounts payable to the contractor represent gross amounts before disposal credits or net amounts. In every case, the preferable practice is to show in a schedule attached to the agreement or in some paragraph in the body of the agreement the gross amount allowed for the element, the retention price to be credited to the Government and the net payment to the contractor so that the maximum limitation may be applied. However, if the gross amounts of the settlement cannot be ascertained from the face of the agreement so as to permit a ready application of the rule after termination upon a count of the inventory, it is desirable that a proper record of the additional necessary information be incorporated in the Depot file for the subject contract at or before the time of execution of the pretermination settlement agreement.

(6) *Stop-Work Points*. a. Various problems related to this subject frequently present themselves to the lawyer engaged in drafting pretermination agreements. Some of the more common are discussed hereinafter.

b. Frequently the contractor desires to continue work to a certain stage of production beyond the normal stop-work points before determining his termination costs. The result desired by the contractor might be achieved, and a violation of the stop-work policy avoided, by a provision for advance notice of termination by the Government to the contractor a specified period of time before the effective date calculated to permit the desired completion), although the Government *cannot* bind itself to give such notice. It should be noted that such an agreement will not become operative if advance notice cannot be given by reason of a direction in the termination directive to terminate immediately or if the additional production will result in end items in excess of military requirements. In such event the settlement will be effected under the Uniform Termination Article instead.

c. If the contracting officer desires to preserve the right of the Government to continue certain unfinished work of the contractor to completion where a military need for the end item exists at termination, the objective may be accomplished by (i) omitting all reference to the subject in the agreement and if a military requirement for the end item to be produced therefrom exists at termination, excluding such work from the terminated portion of the contract by the notice of termination; or (ii) providing in the agreement that if the Government determines that a military requirement exists therefor, it may direct such unfinished work to be completed and the end items to be delivered to it at the contract price. (No. 12).

d. It is desirable to define in the agreement the normal stop-work points as applied to performance under the contract. JTR 241.3 (1) and ASF Circular 366 describe these points in general. A statement in the file should support any contract provisions inserted with reference thereto.

(7) *Common Items.* a. A suitable provision may partly simplify the problem of allocating to the terminated portion of the contract items which are common to the subject contract and other Government and civilian work of the contractor. Moreover, it may effect a savings to the Government in the termination settlement by allocating to contracts not covered by the agreement items otherwise allocable to the terminated work. The clause suggested in the Appendix (No. 13) follows the rule described in the JTR applicable to a settlement after notice of termination.

b. An alternative provision is a paragraph stating that the items of inventory described in the schedule which are common to the contract and to other work of the contractor will be allocated to the terminated portion of the contract and to such other work to the extent provided for by Termination Cost Memorandum No. 3 issued under OCS Regulation 14 (dated 22 February, 1945).

c. A third possible method of dealing with the question is by the insertion of a paragraph which relates to several elements of costs including common items, thus eliminating the necessity of providing individually for

every situation affecting every cost. Such a paragraph would provide that for the purpose of certain paragraphs in the agreement the Statement of Costs Principles and the Termination Cost Memoranda of the Office of Contract Settlement in effect as of the date of the supplemental agreement will be utilized to determine the amount payable to the extent applicable, except where the context of the agreement clearly requires otherwise (see Paragraph C, Section II herein).

(8) *Costs Not Definitely Determined by the Agreement.* The agreement should specify particularly all other items for which the contractor is to be compensated. Where it is not feasible to set forth a mathematical formula for the determination of fair compensation for any of such items or where it is not legally permissible to set forth a lump sum amount representing the negotiated cost, it might be provided that compensation will be paid for such elements and that the amount thereof will be determined after termination in accordance with the provisions of the Uniform Termination Article. For example, it may be provided that the contractor will be paid the reasonable costs of settling subcontractors' termination claims, the amount thereof to be determined under the provisions of the "Termination at the Option of the Government" Article. On termination, pursuant to such paragraph, the parties may negotiate such amount under Paragraph (c) of the Uniform Termination Article, or, if they cannot agree, the contracting officer may make a unilateral determination under Paragraph (d). If dissatisfied with the Contracting Officer's findings, the contractor would have the right to take proper proceedings thereafter under the Disputes Article.

(9). *Releases.* a. It is not to be assumed that the agreement *must* expressly provide for a full release of the rights and liabilities of the parties subject to stated exceptions in the instrument. If its purpose is to determine the methods or bases of ascertaining allocable costs and profit under the Uniform Termination Article, it is sufficient to state in the agreement that the items provided for constitute all of the items for which payment is to be made to the contractor upon termination, and that the total payment therefor as therein provided constitutes fair compensation under the Act and the full and complete amount which will be due to the contractor by reason of the termination of any work. (No. 15). It is significant to note that in every case, a supplemental agreement embodying the final settlement agreed upon after termination must be made, even though based on the pretermination settlement agreement. The release would therefore be accomplished by such final supplemental agreement.

b. Although it is legally possible to provide for self-executing releases in a pretermination settlement agreement and thereby avoid a final settlement agreement after termination, Readjustment Division, Headquarters, ASF, has stated that such practice is not preferred.

(10) *Saving Clause.* It is desirable to provide that except as modified by the pretermination settlement agreement, the terms and conditions of the

contract, including the Uniform Termination Article, remain unmodified and in full force and effect. (No. 17). (See Section II, Paragraph B). Such a clause not only will preserve other pertinent articles of the contract (such as the Disputes Article) but will make clear the intention to retain the provisions of the Uniform Termination Article which have not been modified by the pre-termination settlement agreement.

11. *Definitions.* A useful and desirable provision is a clause stating that all terms in the agreement which are defined in the Contract Settlement Act of 1944 or in the Joint Termination Regulation shall be construed in accordance with such definitions. (No. 18).

C. Complete Forms

(1) Although it has been found possible to provide and require the use of standard forms for final settlement agreements between the contractor and the Government evidencing a post termination settlement, it is difficult and undesirable to provide and require the use of standard forms of pretermination settlement agreements. Pretermination settlement arrangements do not always follow the same pattern. Some may include more advance determinations and decisions than others. Some will involve novel but sound methods of effecting a settlement determining the entire matter of fair compensation. Others may combine features of previously negotiated pretermination deals. To require the use of a prescribed form would be to limit unwarrantedly the ingenuity and imagination of Government personnel negotiating such agreements.

(2) Nevertheless it has been found possible in the Quartermaster Corps to prepare an agreement which may be used as a form of acceptable pretermination settlement agreement with all contractors manufacturing the same commodity. For example, a pretermination settlement agreement has been drafted which is designed especially for textile contracts. (See Appendix A, form No. I). This type of agreement however is adaptable to pretermination settlement arrangements for other commodities. It is based upon the "count and multiply" method of computing costs and employs a schedule correlated with an appropriate contractual clause in the agreement.

D. Informal Memoranda

(1) Frequently discussions with the contractor will lead to understandings which the parties do not wish to reduce to binding agreements because of the possible effect of unforeseeable or uncontrollable future events. It may be desirable in such instances to agree tentatively on the action to be taken after termination. For that purpose a tentative, unenforceable, memorandum may be executed. (See Appendix A, Form No. III). The subjects which may be covered by such arrangements encompass the entire field of the termination settlement and include both procedural and substantive matters. They may constitute, in one arrangement, the complete termination settlement, as

for example, where the memorandum provides that upon termination the contractor waives all claims for fair compensation and will execute a complete release in favor of the Government. As heretofore explained, although a binding pretermination settlement agreement may not be negotiated, where the contractor states that upon termination without notice he will have no claim for fair compensation, a tentative non-binding memorandum may be executed. (See Section III—"No-Charge Pretermination Settlement Agreements.")

(2) It should be noted that once an informal memorandum is executed, the parties are not foreclosed from negotiating other informal memoranda and pretermination settlement agreements relating to the same contract. Thus, if the parties have executed one such memorandum, they may later reach an understanding on other subjects and thereupon may execute another memorandum. Nor are they foreclosed from executing simultaneously an informal memorandum and a pretermination settlement agreement. There will be many cases where circumstances strongly recommend binding agreements as to some elements of a settlement but not all. Consequently, the parties will enter into a binding pretermination settlement agreement upon those subjects susceptible to such treatment and a non-binding informal memorandum on the others.

Although these memoranda may be very informal, they must, however, take into account all of the legal factors involved in the decisions which are the subject of the agreement. Lack of care in such respect may necessitate a renegotiation of the arrangement after termination. The drafting task therefore requires the skill of a lawyer.

Section V

PHRASEOLOGY AND PROVISIONS TO BE AVOIDED

A. Do not use words or phrases which are capable of more than one interpretation even though the draftsman's intended meaning may be regarded as the more reasonable construction. Where possible, use words and phrases either defined or employed in the Act or JTR and use such words only in their technical, defined sense. If clarity will be thereby achieved, include in a "Definitions" paragraph of the agreement the definition of words or phrases employed in the instrument which might otherwise be susceptible to more than one interpretation. For example, if work in process is to be divided into "units" for certain purposes of the agreement, define "units of work in process."

B. Do not provide that payment under the agreement is in full release of all rights and liabilities where work under the contract may be terminated in part as well as in whole. Where a "release" paragraph is utilized, a safe procedure is to provide in all cases for release as to *the terminated portion of the contract* subject to the exceptions stated in the instrument. Always consider the effect of the provisions on partial as well as complete termination.

C. Do not provide for a waiver or release of the Government's rights under the articles concerning defects in, and guarantees and warranties relating to, any completed articles or component parts.

D. Do not provide for continuation of work beyond the normal stop-work points *unless* you are ready to submit to higher authority the *facts* and *figures* showing the case to be exceptional under JTR 241.3(3). (See also Paragraph G, Section V, Part Two, ASF Circular 366 (1944)).

E. Do not provide that the Government will pay a "reasonable amount as agreed upon" by the parties (or the equivalent thereof) for some element of the settlement *unless* it is stated who is to determine the amount if no agreement is reached. (See Section IV, Paragraph 8). Instead, provide that the Government will pay "the reasonable costs" for such element, the amount thereof to be determined under the Article "Termination at the Option of the Government." The "reasonable *agreed* amount" is not the same as a "reasonable amount."

F. Do not provide that the Uniform Termination Article is rescinded. It contains material which might be omitted from the pretermination settlement agreement and which will be useful after termination. It also provides the machinery for ascertaining after termination costs upon which further negotiation is contemplated. Moreover, PR par. 324 which requires its incorporation in certain contracts has not been expressly revoked.

G. Do not anywhere in the contract use the words "successor contracting officer" or "the contracting officer, his successor or representative."

QMS paragraph 15-1-7 designates the officer who is authorized to execute pretermination settlement agreements as the "contracting officer." (See No. 1 in the Appendix). The term "contracting officer" will have been explained in the definitions article of the basic contract (see QMS 3-8-33) as including successors, representatives and the terminating contracting officer.

H. Do not label the clauses in the pretermination settlement agreement as "Articles" if the clauses in the basic contract are designated as "Articles." To avoid confusion in referring to provisions of the basic contract, the provisions of the pretermination settlement agreement should be designated as "Paragraphs."

Section VI

APPENDIX

A. Forms of Complete Supplemental Agreements

1. Following is a suggested **complete** form of a binding pretermination settlement agreement based upon the "count and multiply" method which covers all elements of a contractor's claim for fair compensation and is applicable in the event of a partial or complete termination:

Form No. I

THIS SUPPLEMENTAL AGREEMENT entered into pursuant to the Contract Settlement Act of 1944, (hereinafter called "the Act"), as of this _____ day of _____, 1945, by the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract and _____ (hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. _____ under date of _____, 1945, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract;" and

WHEREAS, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

WHEREAS, it is deemed equitable and appropriate and mutually advantageous to the parties to determine by negotiation and agree in advance of termination upon certain methods and standards for determining fair compensation in the event of termination of work under the Contract, in whole or in part, at the convenience or option of the Government; and

WHEREAS, the available data permits a reasonable forecast, consistent with sound commercial standards, of the factors involved in determining what will be fair compensation for termination of work under the contract in whole or part; and

WHEREAS, the determination of fair compensation according to the methods, standards or bases herein agreed upon will substantially expedite the settlement of any termination of work under this Contract, and will facilitate plant clearance, reconversion of the Contractor's plant from war to civilian production as war conditions permit, the efficient use of materials, manpower and facilities for war and civilian purposes and will otherwise promote the objectives of the Act.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The provisions of this Supplemental Agreement shall apply in the event that performance of work under this Contract is terminated by the Government at its option or convenience in whole, or from time to time in part, in accordance with the Article in the Contract entitled "Termination at the Option of the Government," hereinafter referred to as the "Termination Article."

2. The Contractor shall file with and in form satisfactory to the Contracting Officer its inventory of the fabricated or unfabricated parts, work-in-process, completed work, supplies and other materials produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, for which payment is sought by it under this agreement, and the plans, drawings, information and other property which (except as otherwise stated in this agreement) if the Contract had been completed, would be required to be furnished to the Government. If such inventory lists, or any part thereof, are not returned to the Contractor within days of their receipt with the Contracting Officer's objections as to form indicated, they will be regarded as satisfactory in form to the Contracting Officer. The Government reserves the right to make a complete or selective check of any inventory at any time prior to the disposition of any such items by the Contractor but in no event shall any inventory be disposed of by the Contractor within days of the effective date of termination without the consent of the Contracting Officer. The filing of such inventory, or the filing or failure to file objections as to form thereto, shall not be regarded as a waiver of the Government's right to exclude any items or class of items of inventory listed by the Contractor from the termination settlement in accordance with the Contract and all modifications thereto.

3. The Contractor shall retain for its own use and benefit all of its own fabricated and unfabricated parts, components, work in process, supplies and other materials allocated to the terminated portion of the Contract, except as otherwise provided herein

4. The Contractor may retain for its own use and benefit and at no cost to the Government any finished cloth on hand in its plant or plants at the time of termination, allocable to the terminated portion of the Contract, in excess of the quantity directed by the Government to be delivered to it. If not so retained, or if required by the Government, the Contractor shall transfer title and deliver such cloth to the Government. If the Government determines that there is a military need therefor, it shall have the right to require the completion of any unfinished work and the delivery to it of the end items produced therefrom at the contract price.* As used herein, "finished

*This sentence may be omitted and the same result accomplished (if a military requirement for the finished cloth exists at termination) by excluding such work from the terminated portion of the contract by the notice of termination.

cloth" means cloth upon which nothing further remains to be done under the specifications of the contract and which complies fully with such specifications.

5. Upon termination of work under the contract pursuant to the Termination Article, the Government will pay to the Contractor the following amounts:

a. For finished cloth delivered to and accepted by the Government and not theretofore paid for, a sum equivalent to the aggregate price for such articles computed in accordance with the price or prices specified in the Contract, except that for such cloth representing an unreasonable anticipation of the Contractor's production schedules, payment shall be based upon the Contractor's cost rather than at the contract price.

b. For all materials, supplies, components, work in process and products of any kind retained by the Contractor (except completed end items described in subparagraph (a) above), an amount equal to the sum of the amounts arrived at by multiplying, as of the effective date of the notice of termination, the quantities of such inventory allocable to the terminated portion of the Contract in each of the respective stages of production described in the attached schedule by the applicable "unit payment" as set forth in said schedule;

c. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) of the Termination Article, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under this Contract; and

d. The reasonable cost incidental to termination of work under the Contract, including expenses incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

6. The Contractor warrants and represents to the Government that the sums payable under this agreement, except for that provided for in paragraph 5 c, do not include, directly or indirectly, any reserve for the payment of claims of subcontractors allocable to the terminated portion of the Contract or its costs, if any, of settling such claims. The Contractor further agrees to expedite the processing of claims of subcontractors arising out of the termination of work under the Contract so that subcontractors may be paid their termination charges and clear their plants for other production as quickly as possible.

7. The gross amount of the settlement under this agreement, before deducting the amounts for inventory to be retained by the Contractor and exclusive of any sum payable for post-termination expenses, shall not exceed the total contract price, minus payments otherwise made or to be made under the Contract.

8. The Contractor warrants and represents that for the purposes of this agreement, it has not included in its *own* costs any amounts for loss on special facilities, as defined in paragraph 1 (f), Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts in its amended form as set forth in Regulation No. 5 of the Office of Contract Settlement dated September 30, 1944.*

9. This Supplemental Agreement sets forth all of the elements of any claim of the Contractor for fair compensation in the event of termination in whole or in part under the Contract. The sum computed in accordance with paragraph 5 hereof represents the total amount due to the Contractor in full and complete settlement of his claim for fair compensation for the termination in whole or part of this Contract and constitutes fair compensation within the meaning of the Act. The obligation of the Government to make any payments under this agreement is subject to the provisions of paragraph (e) of the Termination Article.

10. All terms herein which are defined in the Act or in the Joint Termination Regulation shall be construed in accordance with such definitions unless the context herein clearly requires otherwise. For the purposes of paragraphs 5 b, 5 c and 5 d, the amounts of the payment to be made by the Government to the Contractor shall be determined in accordance with the Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts in its amended form as set forth in Regulation No. 5 of the Office of Contract Settlement dated September 30, 1944, and the Termination Cost Memoranda of said Office of Contract Settlement interpreting to the extent that they are applicable, unless the context herein Agreement to the extent that they are applicable, unless the context herein clearly requires otherwise.

11. The schedule of predetermined termination allowances attached hereto is incorporated in and made part of this Supplemental Agreement.

12. Except to the extent modified herein, all the terms and conditions of the Contract, including without limitation the Termination Article thereof, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SCHEDULE OF PREDETERMINED TERMINATION ALLOWANCES

A.	B.	C.	D.	E.
Inventory Stages	Unit	Cost Unit	Unit Retention Offer	Unit Payment Col. C minus Col D)

*Under present regulations, if the agreement provides for the payment of any amount for loss on special facilities as defined in the paragraph above, the agreement must be submitted for approval of Headquarters, ASF.

2. Following is a suggested complete form of a "no charge" pretermination settlement agreement providing for advance notice.

Form No. II

THIS SUPPLEMENTAL AGREEMENT entered into pursuant to the Contract Settlement Act of 1944, (hereafter called "The Act"), as of this..... day....., 1945, by the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract and.....(hereinafter called "the contractor.")

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No..... under date of....., 1945, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

WHEREAS, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the contractor by reason of such termination; and

WHEREAS, the contractor has represented to the Government that if it is given the advance notice of termination hereinafter described, it will have no claim for fair compensation against the Government in the event of termination; and

WHEREAS, the provisions of this supplemental agreement will facilitate plant clearance, reconversion of the contractor's plant from war to civilian production as war conditions permit, the efficient use of materials, manpower and facilities for war and civilian purposes and will otherwise promote the objectives of this Act.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. If the Government gives written notice of termination to the contractor pursuant to Article No. (insert here the number of the Article entitled "Termination at the Option of the Government") of the contract not later than.....days before the effective date of termination, the contractor waives unconditionally, without any further act of writing on his part, any claim or demand for fair compensation against the Government by reason of the termination of the contract. The notice shall be regarded as given (1) on the date when it is deposited in the United States registered mails addressed to the contractor at.....(insert here the contractor's address) or at such other address made known to the contracting officer before the mailing or dispatch of the notice of termination by a writing delivered to him by the contractor; or (2) on the date when it is delivered to a

commercial telegraph company for dispatch to the contractor addressed as aforesaid. The provisions of this paragraph shall apply to a termination in whole or to one or more terminations in part.

2. After each of said terminations, the parties agree to execute a supplemental agreement containing such releases as are deemed necessary or desirable by the Contracting Officer. The waiver in paragraph 1 above shall not be construed as being conditioned upon performance by the parties of the covenants contained in this paragraph.

3. All terms herein which are defined in the Act or in the Joint Termination Regulation shall be construed in accordance with such definitions unless the context herein clearly requires otherwise.

4. Except to the extent modified herein, all the terms and conditions the contract, including without limitation Article.....(insert number of Uniform Termination Article) thereof, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

3. Following is a suggested form of Informal Memorandum:

Form No. III
INFORMAL MEMORANDUM RELATING TO
TERMINATION SETTLEMENT

....., (referred to as "the contractor") has entered into Contract No.dated....., with THE UNITED STATES OF AMERICA (referred to as "the Government"), which contains an Article entitled "Termination at the Option of the Government." Under such Article, the authority is given to the Government at its option at any time to terminate work under the contract in whole, or from time to time in part, and it is provided that the contractor and the contracting officer may agree upon any amount or amounts to be paid to the contractor by reason of such termination.

In advance of any such termination, the contractor and the Government (represented by the officer signing this memorandum) have attempted to reach certain tentative decisions on the subjects hereinafter set forth which would otherwise require action after termination. As a result of their discussions, the following tentative arrangements have been made between the contractor and the Government:

(Insert here the tentative arrangements in simple, informal language. The following is an example:

The contractor will retain all V3C cartons allocable to the terminated portion of the contract at 10c per box and the Government will pay

to the contractor the difference between 10c and the contractor's cost for such boxes. This does not apply to such boxes as are ordered from suppliers but not delivered to the contractor not later than the effective date of termination. The contractor will waive all other claims he may have against the Government and sign an agreement releasing the Government.)

After termination at the option of the Government (if such termination occurs), the foregoing tentative arrangements will be reviewed by the contractor and the contracting officer. It is clearly understood that this informal memorandum is not binding in whole or part and is subject to change by either party at any time or times. It is intended to be binding only if the parties hereto incorporate it in Contract No. by a supplemental agreement executed by them.

Dated at, 1 April, 1945.

.....
(Contractor)
THE UNITED STATES OF AMERICA
By
(Title)

B. Mandatory and Optional Contract Provisions

1. Following are clauses for use in pretermination settlement agreements involving all elements of a termination settlement covering specific topics normally covered by such an agreement. Mandatory provisions are so specified. Others although not mandatory are recommended where applicable.

2. So far as deemed feasible the clauses are set forth in the order in which they normally appear in a contract document. However they *are not to be regarded as constituting a complete form* for a pretermination settlement agreement. Except for the mandatory clauses some of these paragraphs will be inapplicable to certain agreements and others must be supplemented by further provisions not appearing herein. Attention is invited to the fact that in ASF Circular 366 (1944) other sample provisions are found which may be used in lieu of the paragraphs suggested below wherever they are deemed more appropriate.

MANDATORY INTRODUCTORY CLAUSES

No. 1. THIS SUPPLEMENTAL AGREEMENT entered into pursuant to the Contract Settlement Act of 1944, (hereinafter called "the Act"), as of this _____ day of _____, 1945, by the UNITED STATES OF AMERICA, (hereinafter called "the Government") represented by the Contracting Officer executing this contract and _____ (hereinafter called "the contractor").

WHEREAS CLAUSES

No. 2. WHEREAS, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

No. 3. WHEREAS, it is deemed equitable and appropriate and mutually advantageous to the parties to determine by negotiation and agree in advance of termination upon certain methods and standards for determining fair compensation in the event of termination of work under the Contract, in whole or in part, at the convenience or option of the Government; and

No. 4. (Mandatory) WHEREAS, the available data permits a reasonable forecast, consistent with sound commercial standards, of the factors involved in determining what will be fair compensation for termination of work under the contract in whole or part; and

No. 5. WHEREAS, the determination of fair compensation according to the methods, standards or bases herein agreed upon will substantially expedite the settlement of any termination of work under this contract, and will facilitate plant clearance, reconversion of the Contractor's plant from war to civilian production as war conditions permit, the efficient use of materials, manpower and facilities for war and civilian purposes and will otherwise promote the objectives of the Act.

INVENTORY CLAUSES

(First Alternative)

No. 6. INVENTORY. The Contractor shall file with and in form satisfactory to the Contracting Officer its inventory of the fabricated or unfabricated parts, work-in-process, completed work, supplies and other materials produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, for which payment is sought by it under this agreement, and the plans, drawings, information and other property which (except as otherwise stated in this agreement) if the contract had been completed, would be required to be furnished to the Government. If such inventory lists, or any part thereof, are not returned to the contractor within _____ days of their receipt with objections as to form of the Contracting

Officer indicated, they will be regarded as satisfactory in form to the Contracting Officer. The Government reserves the right to make a complete or selective check of any inventory at any time prior to the disposition of any such items by the contractor but in no event shall any inventory be disposed of by the contractor within..... days of the effective date of termination without the consent of the Contracting Officer. The filing of such Inventory, or the filing or failure to file objections as to form thereto, shall not be regarded as a waiver of the Government's right to exclude any items or class of items of inventory listed by the Contractor from the termination settlement in accordance with the Contract and all modifications thereto.

(Second Alternative)

No. 7. INVENTORY. (a) The Contractor shall, within..... days after the effective date of termination, in whole or in part, or within such extension thereof as the Contracting Officer may grant, file with the Contracting Officer its inventory of the fabricated or unfabricated parts, work-in-process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, and the plans, drawings, information and other property which, if the Contract had been completed, would be required to be furnished to the Government, hereinafter referred to as the "inventory."

(b) The Government may take a physical count, in whole or in part, of the inventory within..... days after receipt of Contractor's statement of inventory or within..... days after termination, whichever is longer. Failure on the part of the Government to take such count within the prescribed time limit will operate as approval and acceptance of the Contractor's statement of inventory as filed except as to the quantities not reasonably necessary for the performance of the contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices.

(c) Failure of the Contractor to file its inventory as provided in (a) hereof shall operate as acceptance and approval of such physical count as the Government may take as provided in (b) hereof.

(d) The Government shall, within..... days after taking its own count of the inventory or within..... days after the filing of its inventory by the Contractor, file with the Contractor any exceptions to quantities resulting from differences in physical count or from determinations that items of the inventory are not reasonably necessary for the performance of the Contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices. Any disputes arising from the filing of exceptions by the Government shall be resolved by negotiation and in the event that such disputes are not disposed of by mutual agreement within 15 days from the filing of exceptions, or such extension thereof as the Contracting Officer shall grant, such disputes shall be resolved under the provisions of the Disputes Article of the Contract.

(e) Within..... days after receipt thereof, the Contractor may file supplementary inventories for all materials and purchased parts in transit on the effective date of the Notice of Termination, as evidenced by bills of lading, invoices and other evidences of shipments, and not received prior to taking of inventories as herein provided.

OTHER SUBSTANTIVE CLAUSES

No. 8. COMPUTATION OF CONTRACTOR'S CLAIM. Upon termination of work under the contract pursuant to the Termination Article, the Government will pay to the contractor the following amounts:

(a) For completed articles delivered to and accepted by the Government (or sold or retained as provided in par. (b) (7) of Article..... of the contract) and not theretofore paid for, a sum equivalent to the aggregate price for such articles computed in accordance with the price or prices specified in the contract;

(b) For all materials, supplies, components, work in process and products of any kind retained by the contractor (except completed end items described in subparagraph (a) above, an amount equal to the sum of the amounts arrived at by multiplying, as of the effective date of termination, the quantities of such inventory allocable to the terminated portion of the contract in each of the respective stages of production described in the attached schedule by the applicable "unit payment" as set forth in said schedule;

(c) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) of the Termination Article, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under this contract; and

(d) The reasonable cost incidental to termination of work under the contract, including expenses incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract.

NOTE.—Subparagraphs (a), (c) and (d) may be modified to meet the terms of the particular deal. One type of modification will be found in paragraph 5a of form No. I in the Appendix. Although subparagraphs (c) and (d) are not based upon the count and multiply method, they are included herein so that one type of complete paragraph may be presented for illustration. If completed end items are described in the schedule, payment therefor will be included in subparagraph (b). If it is agreed that post termination expenses are not to be allowed, subparagraph (d) will be deleted.)

No. 9. MAXIMUM LIMITATION ON PAYMENTS. (MANDATORY). The gross amount of the settlement under this agreement, before deducting the amounts for inventory to be retained by the contractor or to be sold and exclu-

sive of any sum payable for post-termination expenses, shall not exceed the total contract price, minus payments otherwise made or to be made under the contract.

No. 10. SUBCONTRACTORS' CLAIMS. The contractor warrants and represents to the Government that the sums payable under this agreement, except for that provided for in paragraph _____, (insert number of paragraph corresponding to paragraph 8 c in Form No. I) do not include, directly or indirectly, any reserve for the payment of claims of subcontractors allocable to the terminated portion of the contract or its costs, if any, of settling such claims. Settlements and payments of such claims will be made pursuant to the provisions of the "Termination at the option of the Government" Article.

No. 11. SUBCONTRACTORS' CLAIMS. The contractor further agrees to expedite the processing of claims of subcontractors arising out of the termination of work under the contract so that subcontractors may be paid their termination charges and clear their plants for other production as quickly as possible.

No. 12. COMPLETION OF UNFINISHED WORK. If the Government determines that there is a military need therefor, it shall have the right to require the completion of any unfinished work and the delivery to it of the end items produced therefrom at the contract price.

No. 13. COMMON ITEMS. In determining which inventory shall be allocable to the terminated portion of the contract, items of inventory which are common to the contract and to other work of the contractor shall be dealt with as follows:

(a) The term "other work" means any work, whether Government or commercial, being done by the contractor other than that relating to this contract.

(b) Items which are reasonably usable on other work of the contractor because they are materials, parts, or components, common in nature both to this contract and other work of the contractor, will not be included in the contractor's inventory and no provision for payment to the contractor with respect thereto will be included in the settlement under this supplemental agreement, to the extent that the items are reasonably applicable to the contractor's other work. The foregoing provision is not intended to prevent the contractor from including in his inventory properly allocable items which cannot be used on other work except at a loss to the contractor and from being paid therefor pursuant to paragraph _____ (insert here the number of the appropriate paragraph in the supplemental agreement which will determine the method of computing payment.)

No. 14. COST PRINCIPLES APPLICABLE. For the purposes of paragraph _____, the amounts of the payment to be made by the Government to the Contractor shall be determined in accordance with the Statement of Principles for Determination of Costs upon Termination of Government

Fixed Price Supply Contracts in its amended form as set forth in Regulation No. 5 of the Office of Contract Settlement dated September 30, 1944, and the Termination Cost Memoranda of said Office of Contract Settlement interpreting such principles in effect as of the date of this Supplemental Agreement to the extent that they are applicable, unless the context herein clearly requires otherwise.

No. 15. ELEMENTS OF CLAIM COVERED. This Supplemental Agreement sets forth all of the elements of any claim of the Contractor for fair compensation in the event of termination in whole or in part under the Contract. The sum computed in accordance with paragraph.....hereof represents the total amount due to the Contractor in full and complete settlement of this claim for fair compensation for the termination in whole or part of this contract and constitutes fair compensation within the meaning of the Act. The obligation of the Government to make any payments under this agreement is subject to the provisions of paragraph (e) of the Termination Article.

No. 16. CONTINGENCIES. Notwithstanding anything herein to the contrary, the provisions of this Supplemental Agreement (or of paragraph.....hereof) shall not apply if, on the date when written notice of termination of work under Article.....(here insert either the number of the "Termination at the Option of the Government" Article or delete the word "Article....." and insert the words "the Termination Article" if elsewhere defined and used in the contract) is delivered to the Contractor, General Preference Order M-388 of the War Production Board issued 19 February 1945 or other orders in the M-388 series, or amendments thereof excepting those which revoke or rescind such Order, are in force and effect and relate to.....(insert for example "wool textiles" or "cotton textiles" or other type of textile). In such event the provisions of the abovementioned Termination Article shall apply to such termination.

No. 17. EXTENT CONTRACT IN EFFECT. Except to the extent modified herein, all the terms and conditions of the contract, including without limitation Article.....(insert number of Uniform Termination Article) thereof, shall remain unmodified and in full force and effect.

No. 18. DEFINITIONS. All terms herein which are defined in the Act or in the Joint Termination Regulation shall be construed in accordance with such definitions unless the context clearly requires otherwise.

No. 19. SCHEDULE OF PREDETERMINED TERMINATION ALLOWANCES*

A	B	C	D	E
Inventory Stages	Unit	Unit cost and Profit	Unit retention offer	Unit Payment (C minus D)
Top--White, Regular.....	Lbs.			
Waste--Soft.....	Lbs.			
Roving.....	Lbs.			
Warp Yarn.....	Lbs.			
Filling Yarn.....	Lbs.			
Yarn on Warp Reams.....	Lbs.			
Yarn on Loom Beams.....	Lbs.			
Cloth.....	Lbs.			

*This schedule is to be used in conjunction with clause No. 8. Under col. C will be set forth the negotiated unit "allowance" which may include factory burden, general and administrative expense, other indirect costs and profit, if any. Under "Unit Retention Offer" will be recorded the contractor's offer for retention of inventory. The "Unit Payment" column represents the difference between col. C and col. D.

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